IN THE HIGH COURT OF BOMBAY AT GOA
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CRIMINAL REVISION APPLICATION NO. 25 OF 2002

Sitaram Kandolkar,
s/o Ramchandra Kandolkar,
aged 24 years, r/o
Caraswado, Near
Vrindavan Hospital,
Mapusa, Goa. ... Petitioner.

Versus

S T A T E ... Respondent.

Shri V. A. Lawande, advocate for the petitioner.

Shri S. N. Sardessai, Public Prosecutor for the State.

CORAM: D. G. DESHPANDE, J.

DATE: 21st February, 2003.

ORAL ORDER

The petitioner/accused, who was convicted under Section 323 of the Indian Penal Code by both the Courts below, has filed this present revision application. The petitioner was charged for offences under Sections 341, 323 and 506 (ii) of the I.P.C. but he was acquitted of the other offences and was charged only under Section 323 of the Indian Penal Code.

2. As per the prosecution case, a 71 years old lady, P.W.1, was assaulted by the accused with a stick which she was carrying because of her own infirmity. She was assaulted on the head four times with the said stick and also an injury was caused to her finger on the right hand. The injuries were bleeding. This incident took place on 15th October, 1998 at about 1.30 p.m.. She was

taken to the Asilio hospital by the police by one Alban Almeida and admitted in the hospital and that was the end of the matter. The accused came to be prosecuted and convicted.

3. Learned counsel for the petitioner/accused vehemently urged that eventhough according to P.W.1 the incident occurred on 15th October, 1998, and she had gone to the police station on the same day, there is contradiction in her evidence and in the evidence of Alban Almeida, P.W.3, and also in the evidence of P.W.6, who is the police officer, according to whom the report came to be lodged on 16th October, 1998. He also contended that the stick has not been recovered. He further contended that the petitioner/accused was falsely implicated and he was not present at the scene of offence either on 15th October, 1998 or on 16th October, 1998. The mainstay of the learned counsel for the petitioner was the contradictions in the date of the incident and the date of the F.I.R.

4. There is no substance in any of the submissions made by the learned counsel for the petitioner. P.W.1 has stated that on 15th October, 1998, the incident occurred and she was assaulted. As stated above, she was taken to the hospital by the police and what she has further stated is as under:-

"I was taken to the hospital by the police and

> one Alban Almeida. I was taken to the Asilio Hospital. I was unable to talk on that day. I gave my complaint on the following day. "

5. The complaint was shown to her and she identified the same as Exh. PW1/A. Therefore, P.W.1 is clear on the point of the date of the incident and of lodging of the complaint and what she has stated that she was taken to the hospital on that day but as she was unable to talk on that day the complaint was given on the following day, i.e. on 16th October, 1998. The complaint, Exh. PW1/A is dated 16th October, 1998 and it shows that it is recorded in the hospital itself. Therefore, the F.I.R. is consistent with the version given by P.W.1.. P.W.3 Alban Almeida has stated that on 15th October, 1998 at about 1.30 p.m. he was told that P.W.1 was assaulted with a stick. He found that P.W.1 was bleeding from her head. He took P.W.1 to the Police Station and P.W.1 told him that the assault was committed by the petitioner/accused.

6. My attention was drawn by the advocate for the petitioner to the statement of P.W.3, wherein he states that in the Police Station P.W.1 gave her complaint and thereafter she was taken to the Asilio Hospital. From this part of the evidence of P.W.3, learned advocate for the petitioner wants to contend that if the complaint was given on 15th October, 1998, then the same complaint is not

coming forth before the Court, or, alternatively, P.W.3 contradicted P.W.1 regarding the date of lodging of the complaint.

7. In fact, what P.W.3 has stated is that in the Police Station P.W.1 gave her complaint and from this it cannot be inferred that the complaint in writing was given by P.W.1 in the Police Station on that day. From the medical certificate which is on record and which shows that she was the complainant, P.W.1 was examined on 15th October, 1998 itself and she was sent by the Police to the Hospital. It is clear that before the Police sent her to the Hospital, they had ascertained from her as to what had happened. If P.W.3 had stated that Exh. PW1/A was given on 15th October, 1998, then the matter would have been different. Even the medical hurt certificate shows that on 15th October, 1998, P.W.1 was admitted in the Hospital.

8. Therefore, the examination of P.W.1 in the Hospital on 15th October, 1998 and her being admitted in the Hospital, is a fact proved which supports the contention of P.W.1 that she could not speak on that day and, therefore, on the next day, i.e. 16th October, the FIR about the offence came to be registered. There is, therefore, no contradiction and both the courts below rightly accepted the evidence of P.W.1 so far as the assault is concerned.

9. the defence of the petitioner/accused is plain and simple denial. Though it was tried to be urged by the learned advocate for the petitioner that the accused was not present either at the scene of the offence on 15th October, 1998 or on 16th October, 1998, such a case is not at all made out by the accused when his statement under Section 313 of the Criminal Procedure Code was recorded. Therefore, firstly, the defence of alibi is not raised in the statement of the accused, nor evidence adduced, nor any motive is attributed to P.W.1 and P.W.3 as to why P.W.1 should implicate the accused. In this background, the conviction of the petitioner/accused does not call for any interference.

10. However, lastly, learned counsel for the petitioner/accused submitted that the petitioner is an employee in the Municipal Council and if the sentence of imprisonment is confirmed, or upheld, he is likely to loose the job. He offered to pay reasonable compensation to the victim for which the learned Public Prosecutor did not have any objection.

11. The offence under Section 323 of the Indian Penal Code is punishable with sentence which may extend to one year or with fine, which may extend to Rs.1,000/-, or with both. Substantive sentence or sentence of

imprisonment is not necessary. Section 357 of the Criminal Procedure Code empowers the Court to order payment of compensation.

12. In a similar matter, i.e. Criminal Appeal no. 7/2000 disposed of by this Court on 31st January, 2003, where the conviction of the three appellants/accused was upheld under Section 323 of the I.P.C., this Court, looking to the facts of the case, passed an order that the three accused should deposit compensation of Rs.3,500/- each in this Court and out of the compensation deposited a sum of Rs.10,000/- had to be paid to the complainant. the instant case also requires consideration on the same lines because, according to the accused he is an employee in the Municipal Council and if his sentence of imprisonment is upheld, he is likely to loose his job. Granting compensation would meet the ends of justice. Therefore, I pass the following Order:-

The Criminal Revision Application is partly allowed. The conviction of the petitioner/accused under Section 323 of the I.P.C. is maintained and he is sentenced to imprisonment till the rising of the Court and payment of Rs.10,000/- rupees ten thousand only) as compensation to the victim of the assault, P.W.1., Smt. Milagrina D'Souza. The petitioner/accused to deposit the compensation before the Additional Registrar today.

Thereafter, the Additional Registrar will give intimation to the said Smt. Milagrina D'Souza and upon her application and proper identification, pay the compensation to her. The accused is present in Court and he has agreed to deposit the compensation before the Additional Registrar today. He has remained in Court till the rising of the Court.

D. G. DESHPANDE, J.

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